84-998 (2)

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CASE NO. _____

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1984

ROBERT E. GIBSON, et al,

Petitioner,

vs.

GEORGE FIRESTONE,

Respondent.

ON WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
APPENDIX

James G. Mahorner
Attorney for Petitioner
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Tallahassee, Florida 32301
Phone: (904) 656-3591

67 pp

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UNITED STATES DISTRICT COURT COMPLAINT

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF FLORIDA

TALLAHASSEE DIVISION

ROBERT E. GIBSON,	:	
Plaintiff	:	
vs.	:	CASE NO. TCA 84-7168-WS
GEORGE FIRESTONE,	:	
individually and as	:	
Secretary of State of	:	
the State of Florida	:	
and MARTIN FINE,	:	
Defendants.	:	

COMPLAINT

COUNT I

The Complaint of Robert E. Gibson respectfully represents:

1. This is an action for injunctive

relief and this Court has jurisdiction under 42 U.S.C. 1331(a), 2343(3), 1983, and the provisions of Art. I, Section 10 and the First and Fourteenth Amendments of the United States Constitution.

2. Plaintiff, Robert E. Gibson, signed the Petition which caused the Defendant, George Firestone, Secretary of State of the State of Florida to certify that the proposed amendment to the Florida Constitution, designated Proposition 1, as having met the State Constitutional requirement for placement on the November ballot for the 1984 Florida General Election. A copy of said certification is attached hereto as Exhibit "1". Plaintiff has expended substantial funds and labor as a strong supporter of the proposed amendment and the limits it places on the government's ability to extract from its citizens the harvest of their labors as

is evidenced by his instituting this Court's case number TCA 84-7109 MMP and as extensive participant in the minor non-party roll ofamicus curiae in the State courts.

3. Defendant, Martin Fine, brought suit against the Defendant, George Firestone, in the First District Court of Appeal of Florida seeking to have the proposed amendment struck from the ballot. Defendant, George Firestone, then publicly acclaimed the virtues of the suit brought by Defendant, Martin Fine and further assisted Martin Fine in his quest by consenting to the issuance of the Order to Show Cause, declining to defend on the merits, neither filing briefs or participating in oral argument nor in any other manner opposing the legal attack made by Defendant Fine. Attached as Exhibit "2" is the complete response made by Defendant, Firestone.

4. Plaintiff and others who supported Proposition 1 sought to intervene so as to obtain party status in the case and were summarily denied the same in this case which was to decide their rights to vote on constitutional initiative proposals even though there was no party who supported such rights. (Plaintiff was permitted the status of amicus curiae.)

5. The District Court, by the attached Opinion, Exhibit "3", found the proposal to meet the State Constitutional requirements against the announced position of both parties to the case.

6. The Petition for Review by Defendant Martin Fine was filed in the Florida Supreme Court by his attorney who was a recent member of such body and who persuaded his former colleagues to enter the Opinion granting mandamus (attached as Exhibit "4") and

depriving Plaintiff all rights to vote on the candidacy of Propositon 1. (Plaintiff acknowledges that the many laws in the Federal and State's jurisprudence which prohibit early appearance before an agency by one previously having status with such agency have no direct application to the courts of Florida).

7. Plaintiff had no party status and since both Defendants, who opposed Proposition 1, were the sole parties in the cause, there was no possibility for the filing of a petition for rehearing, for the taking of an appeal, nor for the filing of motions attacking jurisdiction and other issues which could have been raised by a party to the case.

8. Plaintiff had, upon the certification by the Defendant, Firestone, the Federally protected voting right to cast his vote for

the candidacy of Proposition 1 and to have its limitation upon government's expropriation of his labor's harvest to become law if the majority of the citizens agreed with him. Plaintiff and others responsible for placing the amendment on the ballot are the only candidates. Plaintiff's right to be a candidate is protected by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. Said rights were summarily terminated without procedural due process and are presently being denied.

Plaintiff was deprived of said rights without procedural due process in a judicial proceeding in which his rights were opposed by all parties to that proceeding.

The Defendant, Firestone, is now directed under color of State law to strike the proposed amendment from the ballot

invalidating his previously valid certification under the authority of a nonadversary court action, which he refused to defend, thereby assuring his future emoluments of office without threat of limitation on the power to extract from Plaintiff the support of such benefits.

9. The above-described circumstances disenfranchised Plaintiff of the right to vote for and promote his candidacy of Proposition 1 in violation of the freedom of speech and assembly provisions of the First Amendment and the equal protection and sustantive due process provisions of the Fourteenth Amendment of the United States Constitution. Such disenfranchisement without affording Plaintiff party status violated the procedural due process guaranteed by the Fourteenth Amendment.

10The Florida Supreme Court gave to

Plaintiff a property right in its prior decisions interpreting the initiative provision of the Florida Constitution subject to the condition precedent that he take action in reliance on them stating to him in Florida Forest and Park Service v. Strickland, 18 So.2d. 251, 253 (1944), that it was well recognized that ". . . where a statute has received a given construction by a court of supreme jurisdiction and property or contract rights have been acquired under and in accordance with such construction, such rights should not be destroyed by giving to a subsequent overruling decision a retrospective operation." (Citing Douglass v. Pike County, 101 U.S. 677, 25 L.Ed. 968) Plaintiff has been deprived without the procedural due process guaranteed by the Fourteenth Amendment of the Federal Constitutions of the property right to have

the amendment constitutional under the prior decisions submitted to the electorate.

Plaintiff's opportunity for success are sufficient to justify a preliminary injunction, the United States Supreme Court and the Fifth Circuit Court of Appeals having held in Aerojet General Corporation v. Askew, 514 F.2d. 1072, appeal dismissed and certiorari denied, 46 L.Ed. 187, rehearing denied, 423 U.S. 1026, that straw man litigation between two parties who favor a single position cannot deprive non-parties of their rights.

11Plaintiff has no adequate remendy at law and injunction and declaratory relief by this Court are the only methods whereby Plaintiff can avoid irreparable injury.

COUNT II

IMPAIRMENT OF CONTRACT

The Complaint of Robert E. Gibson

respectfully represents:

1. Plaintiff restates the assertions of the preceeding Count.

2. This is an action for impairment of rights of contract protected by Art. I, Section 10 of the United States Constitution.

3. The Florida Supreme Court in its Opinion in Humphrey v. State, 145 S. 858 (1933), citing the Federal cases of Douglas v. Pike, 25 L.Ed. 968, Louisiana v. Pillsbury, 26 L.Ed. 109, and Gelpcke v. Dubuque, 17 L.Ed. 520, asserts to Plaintiff and others who take action in reliance on its opinions that it will not apply recission of such opinions to them retrospecively.

4. The Plaintiff and others in reliance on such clear pronouncement through great labor and expenditure of funds promoted the proposed constitutional amendment and gathered over 600,000 petitions, paid to the

State of Florida the sum of $37,000 for checking the names on the petitions and further relied on the fact that it met the State Constitutional requirements as laid down by the Florida Supreme Court in its recent but prior opinions in Floridians Against Casino Take Over v. Let's Help Florida, 363 So.2d. 337 (Fla. 1978) and Weber v. Smathers, 338 So.2d. 819 (Fla. 1976), where in his concurring opinion, Mr. Justice England said:

> ". . . Appellants view it narrowly (the one subject limitation). . . . Appellees view it broadly. . . . Neither offers us any precise historical data as to why this limiting phraseology was selected when it was adopted by the Legislature and submitted to the people for their approval in 1972.

In the absence of guidance from the framers of the phrase, it becomes our responsibility to select one or the other interpretation not only looking back on its development as best we can and with a view to its applicability in this case but as well with a concern for future cases where the right of initiative may be exercised. . . ." (Emphasis supplied).

5. The Secretary of State, Defendant Firestone, approved the form of Proposition 1 prior to circulation of the petition for signature and no legal attack was made during such circulation though such is permitted by Floridians, supra.

6. The approval for circulation by the

Defendant, Firestone, of the form constitutes an offer in the classical form of a unilateral contract to certify Proposition 1 for the ballot and permit the candidacy thereof to receive the vote of the electorate in return for the enormous effort of successfully obtaining sufficient signatures.

7. The unilateral contract with the Defendant and the Court was then impaired in violation of Art. I, Section 10 of the Federal and State Constitutions by the subsequent invalidating of the Weber and Floridians Opinions (which were the guidelines used for Proposition 1 subject limitation) and its retrospective application to the subject of Proposition 1, the subject matter of which resulted from a reliance on the court's representation in Humphrey v. State that it would not retrospectively apply recission of existing established holdings to

those whose rights would be adversely affected because of reliance on the prior court holders before the court invalidated them.

8. The court recognized that the single subject standards required by it had been complied with in Amendment 1 and found that to strike down the proposed amendment it was necessary to recede from its opinions in Weber and Floridians.

9. By its Opinion, the Florida Supreme Court further provided the unprecedented requirement that future amendments must designate each part of the Florida Constitution affected, a requirement not previously found or discernable in the existing Florida Constitution and not followed as to amending the Federal or any other State Constitution, and the Court thereby clearly intends to nullify the

present power of the people and of Plaintiff to amend the Constitution by requiring further amendments to specify the constitutional sections affected, which specification under the standards of the Opinion constitute a second subject rendering future amenments invalid. Thus, the Court has undertaken to prevent Plaintiff from mitigating damage from the impairment of contract by preventing successful submission of a modified amendment.

WHEREFORE, Plaintiff prays as follows:

a. That the Court advance this cause on the docket and hold an early final hearing granting an injunction against the Secretary decertifying Proposition 1 or directing its recertification.

b. That the Court declare that Plaintiff's right to vote on Proposition 1 cannot be affected by the straw man

litigation.

c. That the Court grant an early preliminary injunction consistent with the final injunction requested.

d. That the Court allow Plaintiff his cost herein including reasonable attorney fees.

e. The arbitrary actions described herein has been prior restraint preempted Plaintiff's right to promote the November candidacy of Proposition 1 causing delay in Federal relief to become denial of Federal relief necessitating the immediate injunctive doctrine of National Socialist Party of America v. Village of Skokie, 432 U.S. 43 and reinstatement until decision which creates no harm if the proposition is later stricken.

f. That the Court grant all other relief to which Plaintiff appears entitled.

/S/ JAMES G. MAHORNER
JAMES G. MAHORNER
206 South Monroe Street
Tallahassee, Florida 32302
(904) 222-7735

Attorney for Plaintiff

UNITED STATES DISTRICT COURT

INTERVENOR COMPLAINT AND MOTION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CASE NO. TCA 84-
7168-WS

ROBERT E. GIBSON,

Plaintiff,

vs.

George Firestone, individually
and as Secretary of State
of the State of Florida, and
Martin Fine,

Defendants,

and

Ed Havill, Y. Y. Phillips, Jr.
George Schulte,
Floridians for Tax Relief and
Limit Government Committee,

Intervening Plaintiffs,

vs.

George Firestone, Individually and
as Secretary of State of the State
of Florida, and Martin Fine,

Defendants.

INTERVENING COMPLAINT

Intervening Plaintiffs Ed Havill, Y. Y.

Phillips, Jr., George Schulte, Floridians for Tax Relief, and Limit Government Committee, respectfully represent and allege:

COUNT 1

1. The Complaint in this action, Count 1, paragraphs 1 through 11 is incorporated herein as if fully set forth.

2. Ed Havill, Y. Y. Phillips, Jr., and George Schulte, are citizens, taxpayers and electors of Florida.

3. Ed Havill, Y. Y. Phillips, Jr., and George Shulte, have expended funds and labor in support of the "Citizens' Choice on Government Revenue" proposed Florida Constitutional Amendment 1 which was certified as to ballot position for the November, 1984 general election ballot.

4. Floridians for Tax Relief's an association of Florida citizens, including Ed Havill and others, authorized and required by

Florida law, Section 100.371(3), Fla. Stat., to register as a political committee. It has expended in excess of $ 200,000 and labor in efforts to promote and sponsor Amendment 1.

5. Limit Government Committee is also an association of Florida citizens, including George Schulte and others, which has expended funds and labor to promote and sponsor the adoption of Amendment 1. It is also registered pursuant to Section 100.371(3), Fla. Stat. As the first political committee to file the "Citizens' Choice on Government Revenue" initiative petition with the Secretary of State of Florida, it was designated pursuant to Fla. Admin. Code Section 1C-7.09, as the sponsoring organization of Amendment 1.

6. Pursuant to Florida Constitution, Art. Xl, sec. 5, and law, Section 100.371 Fla. Stat. and Section 1C-7.10, Fla. Admin.

Code., the proposed Amendment 1 was placed on November, 1984 general election ballot in Florida, and can be placed on no other ballot.

7. In the state court proceeding initiated by Defendant Martin Fine the Respondent therein, George Firestone, Defendant herein, stipulated jurisdiction by filing a "Consent to Entry of Show Cause Order" concurrently with Fine's original petition, even though Defendant Firestone had determined not to defend that suit. When Defendant Firestone then filed his response indicating he would not defend, the Intervening Plaintiffs moved to substitute parties in whole or in part, or to add the Intervening Plaintiffs as parties respondent, where upon Defendant Fine opposed the motion to substitute parties.

8. Intervening Plaintiffs' rights to due

process under the Fourteenth Amendment to the United States Constitution were denied because of the non-adversary and sollusary proceeding in th state courts. Motions and demands they expressed an intention to make (motion to dismiss, demand for a jury trial) were made unavailable to them, without even any ruling of denial thereon.

9. Intervening Plaintiffs' rights to equal protection under the Fourteenth Amendment to the United States Constitution were denied them, by the granting of Defendant Fine party status in the state courts (when he alleged he was a "citizen and taxpayer"), while they were denied party status in the same case after allegation they were "citizens, taxpayers and electors" and that they were among the sponsors of Amendment 1. Procedural rights cannot be granted to some litigants and arbitrarily and

capriciously denied to others.

10. The decision of the Florida Supreme Court in Fine v. Firestone on March 27, 1984, was contrary to numerous precedents of that Court, amounted to "issue exclusion" from the ballot, and was content-based discrimination based on the Florida Supreme Court's reading of Amendment 1 to individually classify and restrict Amendment 1 in the pre-election prior restraint stage as to speech and assembly and associational and voting rights (fundamental rights) of the intervening Plaintiffs.

COUNT II

1. The Complaint in this action, Count II, paragraphs 1 through 9, is incorporated herein as if fully set forth.

2. The allegations of the foregoing paragraphs hereinabove are incorporated herein as if fully set forth.

3. Intervening Plaintiffs relied not only on the Weber v. Smathers, 338 So. 2nd 819 (Fla. 1976) and Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2nd 337 (Fla. 1976) cases, but also on numerous decisions of the Florida Supreme Court that that court is bound to follow the established law. Gilliam v. Stewart, 291 So. 2nd 593, 594 (Fla. 1974); Hoffman v. Jones, 280 2nd 431, 433-434 (Fla. 1973); and Dozier v. Wood, 431 So. 2nd 184, 187 (Fla. 1983).

Wherefore, Intervening Plaintiffs incorporate herein and adopt the Complaint prayer, paragraphs a through f, as if fully set forth herein.

Dennis M. O'Connor
Dennis M. O'Connor
University of Miami
Coral Gables, Florida 33124
(305) 665-3934

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing intervening Complaint was mailed this 15th day of May, 1984, to:

Jim Smith, Attorney General of Florida
Attorney for Defendant Secretary of State George Firestone
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32301
(904) 488-1573

Arthur J. England, Jr., Esquire
Attorney for Defendant Martin Fine
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Stuart L. Simon, Irwin Block
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Miami, Florida 33134
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James C. Mahorner, Esquire
Attorney for Plaintiff
206 South Monroe Street
Tallahassee, Florida 32302
(904) 222-7735

Dennis M. O'Connor, Attorney

UNITED STATES DISTRICT COURT OPINION

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

Robert E. Gibson, CASE NO. TCA 84-7168-WS
Plaintiff,
vs.
George Firestone, Individually and as Secretary of State of the State of Florida, and Martin Fine,
Defendants
and
Ed Havill, .Y.Phillips, Jr., and George Schulte,
Floridians for Tax Relief, and Limit Government
Committee,
Intervening Plaintiffs,
vs.
George Fireston, Individually and as Secretary of State of the State of Florida, and Martin Fine,
Defendants,

INTERVENING COMPLAINT

Intervening Plaintiffs Ed Havill, Y. Y. Phillips, Jr., George Schulte, Floridians for Tax Relief, and Limit Government Committee, respectfully represent and allege:

COUNT 1

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2. Ed Havill, Y. Y. Phillips, Jr., and George Schulte are citizens, taxpayers and electors of Florida.

3. Ed Havill, Y. Y. Phillips, Jr., and George Schulte, have expended funds and labor in support of the "Citizens' Choice on Government Revenue" proposed Florida Constitutional Amendment 1 which was certified as to ballot position for the November, 1984 general election ballot.

4. Floridians for tax relief is an association of Florida citizens, including Ed Havill and others, authorized and required by Florida law, Section 100.371(3), Fla. Stat., to register as a political committee, It has expended in excess of $200,000 and labor in efforts to promote and sponsor Amendment 1.

5. Limit Government Committee is also an association of Florida citizens, including

George Schulte and others, which has expended funds and labor to promote and sponsor the adoption of Amendment 1. It is also registered pursuant to Section 100.371(3), Fla. Stat. As the first political committee to file the "Citizens' Choice on Government Revenue" initiative petition with the Secretary of State of Florida, it was designated pursuant to Fla. Admin. Code Section 1C-709, as the sponsoring organization of Amendment 1.

6. Pursuant to Florida Constitution, Art. XI, sec. 5, and law, Section 100.371 Fla. Stat. and Section 1C-7.10, Fla. Admin. Code., the proposed Amendment 1 was placed on no other ballot.

7. In the state court proceeding initiated by Defendant Martin Fine the Respondent therein, George Firestone, Defendant herein, stipulated jurisdiction by

filing a "Consent to Entry of Show Cause Order" concurrently with Fine's original petition, even though Defendant Firestone had determined not to defend that suit. When Defendant Firestone then filed his response indicating he would not defend, the Intervening Plaintiffs moved to substitute parties in whole or in part, or to add the Intervening Plaintiffs as parties respondent, whereupon Defendant Fine opposed the motion to substitute parties.

8. Intervening Plaintiffs' rights to due proess under the Fourteenth Amendment to the United States Constitution were denied because of the non-adversary and collusary proceeding in the state courts. Motions and demands they expressed an intention to make (motion to dismiss, demand for a jury trial) were made unavailable to them, without even any ruling of denial thereon.

9. Intervening Plaintiffs' rights to equal protection under the Fourteenth Amendment to the United States Constitution were denied them, by the granting of Defendnt Fine party status in the state courts (when he alleged he was a "citizen and taxpayer"), while they were denied party status in the same case after allegation they were "citizens, taxpayers, and electors" and that they were among the sponsors of Amendment 1. Procedural rights cannot be granted to some litigants and arbitrarily and capriciously denied to others.

10. The decision of the Florida Supreme Court in Fine v. Firestone on March 27, 1984 was contrary to numerous precedents of that Court, amounted to "issue exclusion" from the ballot, and was content-based discrimination based on the Florida Supreme Court's reading of Amendment 1 to invidously classify and

restrict Amendment 1 in the pre-election prior restraint stage as the speech and assembly and associational and voting rights (fundamental rights) of the Intervening Plaintiffs.

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(Fla. 1974); Hoffman v. Jones, 280 So.2d 431, 433-434 (Fla. 1973); and Dozier v. Wood, 431 So.2d 184, 187 (Fla 1983).

WHEREFORE, Intervening Plaintiffs incorporate herein and adopt the Complaint prayer, paragraphs a through f, as if fully set forth herein.

Dennis M. O'Connor
Dennis M. O'Connor P.A.
c/o School of Law-Box 8087
University of Miami
Coral Gables, Florida 33124
(305) 665-3934

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this Intervening Complaint was mailed by Express Mail May 12, 1984 to :

Jim Smith, Attorney General of Florida
Attorney for Defendant Secretary of

State George Firestone
Mitchell D. Franks, Chief Trial Counsel
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32301
(904) 488-1573

and by U. S. first class mail to:

Arthur J. England, Jr., Esquire
Attorney for Defendant Martin Fine
Steel, Hector & Davis
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(305) 577-2987

Stuart L. Simon, Irwin Block, and
Burt Hellman, Esquires
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Fine, Jacobson, Block, Klein, Colan,

and

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Miami, Florida 33134

(305) 446-2200

_____

Dennis M. O'Connor, Attorney

OPINION
UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF FLORIDA

Now whether or not that's desirable as a condition or proviso for initiative amendments is not something I'm addressing. I simply say the Florida Constitution doesn't contain that proviso. It is a proviso issued by the Florida Supreme court in the March 27th opinion. And that peg, we think, does give grounds for appeal for a party in that case. We can assure you that George Firestone won't appeal, Martin Fine won't appeal. And so the denial of whatever Federal rights our Plaintiffs have esentially is left in limbo by the March 27th Florida Supreme Court opinion. The only way their rights could be vindicated, Your Honor, is by a Federal Court recognizing that there are Federal rights.

THE COURT: And do what?

MR. O'CONNOR: Simply declare that the Fine versus Firestone proceeding is a

nullity and, therefore, Amendment 1 remains on the ballot.

(Discussion off the record)

THE COURT: Okay. Is that it, sir?

MR. O'CONNOR: Direct the Secretary of State, that is George Firestone, to leave it on the ballot is essentially what I was saying. That's all.

THE COURT: All right.

(Discussion off the record)

THE COURT: Under Rule 52 (a) of the Federal Rules of Civil Procedure, this will constitute the Court's decision in this case, reserving to the Court the right to modify this by subsequent written order either on my own initiative or as a result of a motion for reconsideration. But I announce the decision today because the original Plaintiff in this case, Robert E. Gibson, filed this action in this court on April 27th and asked that this

Court move this case along by advancing it on the docket and holding an early final hearing.

So, as I previously told you in this hearing, that order of mine, April 30th, set this case for final hearing. And the Intervening Plaintiffs, of course, came into the case with full knowledge of the schedule. I realize, Mr. O'Connor, that the Attorney General has filed a recent Motion to Dismiss, Motion for Summary Judgment, and you have asked for some time to be heard on that. I would give you a short period of time to respond, and I would treat that in this regard, as a motion for reconsideration, in view of the ruling that I think I must announce in this case.

Now, this matter is before me asserting some denial of a party status in the Florida courts and alleges consequent

denial of several Federally-protected rights. And so I'm called upon to determine whether the Plaintiffs have stated a case under the situation that would give them right to be heard in this court.

What this court is not called upon to determine is whether the proposition 1 is good or bad. I merely decide the issues that have been presented before me.

Now this case, then, came on today for final hearing and I have heard the evidence that the parties have to present. The file in this case is already substantially thick. The parties, I believe, have set forth their legal positions, I think, rather clearly and sometimes, repetitively, so I think I know the legal position taken by each of you in this case, subject, of course, Mr. O'Connor, to your right to respond to the Defendant's Motion to

Dismiss and Motion for Summary Judgment. But my view of the evidence and the law as I must apply it is that the Plaintiffs have not suffered the denial of any Federally-protected right. I say that because there is no property right in hving the amendment declared constitutional. There is no right to vote on the amendment. There is no violation of equal protection of the First Amendment or substantive due process.

Now, even if this Court were to find that the Plaintiffs had stated a cause of action for denial of a Federally-protected right, which I suggest would be stretching legal reasoning, the Court is unable to conclude how the actions of the Defendant Firestone could have operated to deny these rights.

Now, any supposed right of the Plaintiffs to participate in the judicial

process was denied by the Florida courts and not the Defendant Firestone before this Court today. Firestone did not oppose Gibson's intervention as a party in the First District Court of Appeals. And no claim can lie against him, that is Firestone, for the DCA as failure to allow Gibson party status.

Plaintiff Gibson did not even request party status before the Florida Supreme Court, nor did he attempt to appeal the denial of party status to the Florida Supreme Court.

Now, what the Plaintiff Gibson now seeks in this court is an appeal of the First District's denial of party status. And also the Intervening Plaintiffs have made the same contention. Plaintiff Gibson has not stated a causal connection between the actions of Firestone and the denial of his party status. I, therefore, feel that this count

could be dismissed for failure to state a claim.

What is in reality an attempted appeal of a decision of the highest court of a sovereign state is brought before me in this court in the guise of an alleged infringement by the Florida Supreme Court of an implied contract between the Defendant Firestone and the Plaintiff. I think the simple answer to this is that no such contract existed. To hold that the Defendant Firestone, by certifying the form of a proposed constitutional amendment thereby entered into a contract to place the amendment on the ballot, would be hold the Florida Supreme Court lacks the power to review the content of the proposed amendment for compliance with the State Constitution. In my judgment, this is an untenable position. There being no contract between

the Plaintiffs and the Defendant Firestone, there is no set of facts under which Plaintiff could prevaill, not even a conceivable set of facts under which the Plaintiff could prevail.

Even assuming that such a contract existed, Defendant Firestone, the only Defendant in this court, is not accountable for the Florida Supreme Court's supposed interference with this alleged contract. In my judgment, Count II should be dismised for failure to state a claim upon which relief may be granted.

Now Counsel, I know all of you are interested in a quick resolution of this matter. I think you have presented to me your positions. I have announced to you what my ruling will be, and that is that the Plaintiff in this case, both the Plaintiff Robert Gibson and the Intervening Plaintiffs,

Ed Havill, Y. Y. Phillips, Jr. George Schulte, Floridians for Tax Relief, and Limit Government Committee will take nothing by this action, and judgment in this case will be for the Defendant George Firestone. That will be the Court's ruling.

As I have previously announced, I may modify this by a written order either expanding upon or modifying those findings as announced in the record. But I give it to you now because whatever action you are going to ake, I think you need to make your plans, and I think you are entitled to a quick ruling by this Court, and I have given it to you.

I will wait until -- Mr. O'Connor, when do you suppose you will have that response in, sir?

MR. O'CONNOR: I can have it in by Wednesday, Your Honor. Due to the holiday,

it's a little difficult to --.

THE COURT: If you can get it in by Wednesday or Thursday of next week, that will be fine.

MR. O'CONNOR: All right.

THE COURT: As I say, I will treat it, because of the shortness or the late time in which you were -- Mr. Franks moved on this thing, I would --.

MR. O'CONNOR: As a motion to reconsider?

THE COURT: Yes, sir.

Now, does anybody have any questions?

MR. FRANKS: Your Honor, as part of our motion, we have asked for costs and fees in this action, and would ask that after Mr. O'Connor has had an opportunity to respond to our motion, that you also consider awarding the Defendants costs and fees to include attorney fees.

THE COURT: Well, you submit whatever documentation you have, request and itemization of those, and I will consider it.

MR. FRANKS: Thank you, sir.

THE COURT: Anybody have any questions over here?

MR. MAHORNER: No, sir.

THE COURT: Being nothing further, this hearing is concluded. Court is adjourned.

MR. MAHORNER: Judge, we would like to thank you for hearing this case so quickly. Thank you.

THE COURT: Sure. You are welcome.

(Hearing concluded at 6:06 p.m.)

* * *

UNITED STATES DISTRICT COURT OPINION

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 84-3422

ROBERT E. GIBSON,
Plaintiff - Appellant,

and

ED HAVILL, et al.,
Intervening Plaintiffs-Appellants,

v.

GEORGE FIRESTONE, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Florida

(August 28, 1984)

Before: HILL and HENDERSON, Circuit Judges, and WISDOM*, Senior Circuit Judge.

HILL, Circuit Judge:

*Honorable John Minor Wisdom, U. S. Circuit Judge for the Fifth Circuit, sitting by designation.

This appeal touches upon a wide variety of complex and important issues, one of which proves to be dispositive of the dispute: did the district court abuse its discretion in refusing to enjoin the Florida Secretary of State from complying with the Florida Supreme Court's mandate to remove from the upcoming general ballot a proposed constitutional amendment that the Florida Supreme Court fould violative of the state constitution. We are unable to conclude that the district court abused its discretion in denying appellants' injunctive relief. Hence, we affirm.

An elucidation of the facts illustrates the difficult position in which appellants find themselves and the reasons why the federal courts are not empowered to remedy their plight. Appellants expended substantial sums in organizing support for a

proposed amendment to the Florida Constitution.[1] After acquiring the necessary signatures of 600,000 state electors, appellants submitted their citizens initiative petition to the Florida Department of State for verification. The Secretary of State, finding that the petition satisfied the format requirements of state law, issued a Certificate of Ballot Position to the proposed amendment, certifying it for placement on the November 1984 general election ballot.

Shortly after the Secretary of State certified the amendment, an action was filed in the Florida District Court of APpeals seeking its removal.[2] The suit named

[1]The proposed amendment is set out and discussed more fully by the Florida Supreme Court in its decision holding the amendment unconstitutional. See Fine v. Firestone, 448 So.2d. 984 (Fla. 1984).

[2]Martin Fine instituted the action in

Secretary Firestone as the defendant in interest and requested the Florida appellate court to issue a writ directing Secretary Firestone to remove the proposed amendment, primarily on the grounds that the proposal violated the state constitution's single-subject requirement for constitutional amendments. See Fine v. Firestone, 443 So.2d. 253, 256-57 (Fla. Dist. Ct. App. 1983).

Appellants then sought to intervene in the proceedings before the Florida District Court of Appeal. Arguing that Secretary Firestone has publicly voiced opposition to

the Florida appellate court. Although appellants named Fine as a defendent in their federal court suit, the district court dismissed Fine shortly before the final hearing on Secretary Firestone's motions to dismiss and for summary judgment. Appellants have not challenged that ruling; the record does not otherwise disclose the nature of Fine's interest in the outcome of this litigation.

the proposed amendment and had filed a response disclaiming any intention of supporting the merits of the proposal, appellants asserted their right to intervene as the real parties in interest. Although Secretary Firestone did not oppose appellants' motions to intervene, the state appellate court denied them party status but granted them lave to appear as amici curiae.

The Florida District Court of Appeal ultimately ruled that extraordinary relief was not available to direct the Secretary to remove the proposed amendment. Fine v. Firestone, 443 So.2d. at 255-56. However, the appellate court elected to certify the case to the Florida Supreme Court because questions of great public importance were presented.[3]

[3]The appellate court opined that the proposed amendment was sound under Florida law. In particular, the court reasoned that

The Florida Supreme Court accepted jurisdiction and ordered the proposed amendment removed from the general ballot. Fine v. Firestone, 448 So.2d 984, 993 (Fla. 1984). The court held that mandamus was an appropriate means for testing the constitutionality of the proposal, id. at 987, and that the amendment violated the state constitution's prohibition against multiple-subject constitutional amendments, id. at 987-93. Significantly, the court addressed only the state constitutional issue[4] and rested its decision entirely on its reading of article XI, section 3 of the

the proposal was not subject to attack under the single-subject provisions of the state constitution, see Fla. Const. art. XI, section 3, because the Florida Supreme Court had indicated that the provision was to be read broadly and with a pragmatic approach. See 443 So.2d at 256-57.

[4]The Court did not consider whether the proposal ran afoul of federal due process standards. See Id. at 986 n.1.

Florida Constitution. Id. at 987.[5]

Appellants then filed the present suit in the United States District Court for the Northern District of Florida claiming that the state proceedings in which they were refused leave to intervene deprived them of their right to vote, violated their rights to due process and equal protection and impaired their contract rights under art. I, section 10 of the U.S. Constitution. The complaint alleged jurisdiction under 28 U.S.C. section 1331(a) and 1343(3), 42 U.S.C. section 1983 and art. I, section 10 and the First and Fourteenth Amendments of the U. S. Constitution, and in its prayer for relief, requested the district court to grant an

[5]While appellants did not seek leave to appear before the Florida Supreme Court, perhaps because the appellate court upheld the proposal, they did proceed as amici at the behest of the court. Thus, the state courts had the benefit of appellants' arguments throughout the state proceedings.

"injunction against the Secretary('s) decertifying Proposition 1 or directing its recertification." The district court granted appellants' request for an advanced final hearing on their motion for injunctive relief and, after conducting such hearing, held that appellants had failed to state a claim on which relief could be granted. Appellants now appeal.

Our task is two-fold. First, we must consider whether the allegations stated in the complaint are sufficient to invoke the limited jurisdiction of the federal courts. Second, we must decide whethe appellants have stated a claim on which relief can be granted such that the district court abused its discretion by denying injunctive relief on that ground. To summarize our conclusions, we hold that the complaint properly invoked the subject matter jurisdiction of the

federal courts; however, appellants have not stated a claim on which relief could be granted. Thus, the denial of injunctive relief does not constitute an abuse of discretion.

I. JURISDICTION

Appellee questions whether the federal courts have jurisdiction to consider the claim stated by appellants' complaint. Federal subject matter jurisdiction is determined by the face of the well-pleaded complaint. Phillips Petroleum Co. v. Texaco, Inc., 415 U.S. 125, 127-28 (1974); Gully v. First National Bank in Meridian, 299 U.S. 109, 112-13 (1936). Further, all well-pleaded allegations must be taken as true for purposes of determining the existence of federal jurisdiction. See Goosby v. Osser, 409 U.S. 512, 521 n.7 (1973) (citing authorities).

Here, appellants have alleged a deprivation of their first amendment right to vote as well as their fourteenth amendment rights to due process and equal protection. See Record on Appeal at 6 and 80. These allegations, whether sufficient to state a claim for relief, are adequate to invoke federal subject matter jurisdiction. See Goosby v. Osser, 409 U.S. at 521-22. Thus, we find that appellants have stated a claim that is cognizable under 28 U.S.C. section 1343 (3), the jurisdictional counterpart of 42 U.S.C. section 1983.[6]

II. INJUNCTIVE RELIEF

The relief requested of the district court was an order "granting an injunction

[6]Because both parties have impressed upon this court the need for an early disposition of this appeal, we abbreviate our discussion of the jurisdictional issue and proceed to consider the merits of appellants' claims.

against the Secretary('s) decertifying Proposition 1 or directing its recertification." Record on Appeal at 11.[7]

[7] Appellants also asked the district court to "declare that (their) right to vote on Proposition 1 cannot be affected by straw man litigation." Record on Appeal at 11. In essence, appellants claimed that the state proceedings were non-adversarial, because Secretary Firestone declined to defend the merits of the proposed amendment, and, therefore, that the Florida Supreme Court decision should be declared void. See Record on Appeal at 152-54.

In a quite different context, this court has recognized that principle that a judgment produced by nonadversarial proceedings is a mere form and not binding on other courts. See Aerojet-General Corp. v. Askew, 511 F.2d 710, 720-21 (5th Cir. 1975) (analyzing precedents). Aerojet-General, however, involved state proceedings instituted to avoid the effect of a federal court decision adjudicating title to land in Florida. Noting that the Deputy Attorney General for the state had admitted the nonadversarial nature of the state court proceedings, the Fifth Circuit held that it was not obligated to follow the state court ruling in favor of the federal court defendant. Id. at 7821. The present case, unlike Aerojet-General does not turn on whether the prior state court decision is entitled to res judicate effect. Appellants were not parties to the proceedings in state court and cannot be bound by any judgment rendered there.

The Griffin Court analogized to Briscoe v. Kusper, 435 F.2d. 1046 (7th Cir. 1970). In Briscoe candidate nominating papers for city alderman elections were invalidated by the Chicago Board of Election Commissioners on the day before the scheduled election. The commissioners struck certain nominations on the ground that they contained improper duplicate signatures and failed to include middle initials for signatures on the accompanying petitions. In doing so, the commissioners announced a sharp break from

Absent an argument that the district court was bound by the Florida Supreme Court decision, appellants had no grounds for requesting the court to declare tha decision void. Federal courts have no appellate review authority over judgments of state courts. See, e.g., Chicago, R. I. & P. R. R. v. Stude, 346 U.S. 574, 580-81 (1954); Reynolds v. Georgia, 640 F.2d. 702, 703 (5th Cir.), cert. denied, 454 U.S. 865 (1981). For this reason, appellants could only request injunctive relief; no declaration that the Florida Supreme Court's decision was void was available.

prior policy and effectively precluded the candidacies of those who had relied on earlier Board interpretations. Under these circumstances, the Seventh Circuit held that candidates and voters had been unconstitutionally denied the right to participate in aldermanic elections by the last minute policy shift. The court declared those practices violative of the first and fourteenth amendments and enjoined the future use of such procedures. Id. at 1048, 1058.

Appellants argue that Griffin and Briscoe are indistinguishable from the present case, but we find two important distinctions. First, the federal rights vindicated by the First